Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Review --	)	
Review of the Commission's Broadcast	)	MM Docket No. 98-35
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF
OFFICE OF COMMUNICATION, INC.,
UNITED CHURCH OF CHRIST
and
BLACK CITIZENS FOR A FAIR MEDIA

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SUMMARY

The surge of consolidation in the broadcast industry demonstrates a continuing, critical need for the present limits on broadcast ownership. These rules are necessary for the fulfillment of the public interest obligations of the Communications Act. Moreover, viewpoint-neutral, structural rules -- such as the ownership rules under consideration here -- are the least intrusive way to protect citizens' First Amendment right to receive information from diverse sources.

Recent revelations of fabricated news stories and controversies regarding the validity of news programs graphically highlight the necessity of diverse and competing gatekeepers of political and factual information. Such institutions offer the public a private means of scrutinizing and evaluating news coverage. More than ever, current events demonstrate that when the constitutionally-protected marketplace of ideas is dominated by an oligopoly, it becomes less efficient and undermines democratic values.

The creation of new media outlets does not obviate the need for the Commission's broadcast ownership rules. Often, these new entrants are owned by the same corporations already providing broadcast service to a community. When a single corporation controls several media outlets in one community, none of those media outlets has an incentive to compete with or contradict the other's news coverage. Nor do they have any incentive to cover stories that may harm the interests of their single corporate parent. Additionally, because these new outlets distribute programming nationally, they cannot fulfill one of broadcasters' most critical roles: providing coverage of local issues.

The Commission requires meaningful data to evaluate its broadcast ownership rules. The Commission cannot rely on commercially-available data. Private, commercially-produced data

is inadequate to evaluate whether broadcasters are meeting their public interest obligations for two important reasons. First, they are based on estimates, not actual reported values. Second, this data is not collected to determine whether stations are operating in the public interest.

Viewpoint diversity has no impact on corporate stock prices or their bottom lines; the industry will never collect the information needed to evaluate it. The Commission must collect its own data to satisfy the Congressional directive to evaluate whether its rules continue to meet the public interest.

Finally, UCC/BCFM applaud the Commission for superseding any precedent indicating that the mere pendency of a proceeding considering the alteration of a broadcast ownership rule justifies a waiver of those rules. UCC/BCFM commends the Commission for taking a more active role in the oversight of delegated authority exercised by the Mass Media Bureau.

COMMENTS OF UCC/BCFM

The United Church of Christ, Office of Communication, Inc. and Black Citizens for a Fair Media ("UCC/BCFM") respectfully submit these comments in response the Commission's *Notice of Inquiry*, FCC 98-37 (rel. Mar. 13, 1998) (*"NOI"*).

INTRODUCTION

The surge in ownership consolidation in the broadcast industry demonstrates that the Commission's broadcast ownership rules remain essential to fulfillment of the public interest requirements of the Communications Act. The Commission has recently initiated several proceedings seeking comment on its broadcast ownership rules, asking whether they continue to be justified given the current state of competition in the broadcast industry. *See, e.g., Notice of Proposed Rulemaking*, 11 FCC Rcd 19949 (1996). UCC/BCFM and other citizens' groups have filed numerous comments and reply comments in those proceedings.[1]

UCC/BCFM have little to add to this docket that has not already been presented to the Commission. Consolidation continues unabated and nothing indicates that this trend will change. To the extent that any additional information is available, it demonstrates, if anything, a greater need for retaining current limits on broadcast ownership. The data necessary to fully evaluate the Commission's rules, however, is lacking. UCC/BCFM urge the Commission to collect additional, meaningful data that will allow it to satisfy the Congressional directive to evaluate whether its rules

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[1] UCC/BCFM most recently filed with respect to these issues in a joint response to both *Second Further NPRM*, 11 FCC Rcd 21655 (1996) and *Notice of Proposed Rulemaking*, FCC 96-437, 11 FCC Rcd 19949 (1996). *See* MAP *et al.* comments, MM Dockets 91-221, 96-222, 87-7, 87-8 (filed Feb. 7, 1997) ("MAP *et al.* comments"); MAP *et al.* reply comments, MM Dockets 91-221, 96-222, 87-7, 87-8 (filed Mar. 21, 1997) ("MAP *et al.* reply comments").

continue to meet the public interest.

Viewpoint-neutral structural rules, such as the ownership rules under consideration in this proceeding, are the least intrusive way to protect citizens' First Amendment right to receive information from diverse sources. *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). The more entities that compete with each other in the production of news and locally-originated programming, the higher the quality of the overall coverage for any a particular community.

Recent revelations of fabricated news stories and controversies regarding the validity of news programs graphically highlight the value of diverse and competing gatekeepers of political and factual information. Such institutions offer the public a private means of scrutinizing and evaluating the news coverage they receive. More than ever, current events demonstrate that the constitutionally-protected marketplace of ideas becomes distorted and undermines democratic values when it is dominated by an oligopoly. This intellectual marketplace is worthy of unparalleled protection.

The Commission must balance competing First Amendment interests in favor of the public's "paramount" right to receive access to diverse sources of information.[2] *Red Lion*, 395 U.S. 367. As UCC/BCFM and other commenters have repeatedly shown, format or programming diversity, absent ownership diversity, does not serve the First Amendment rights and needs of listeners and viewers. MAP *et al.* comments at 8. When a single corporation controls several media outlets

[2] "[T]he First Amendment and antitrust values underlying the Commission's diversification policy may properly be considered by the Commission in determining where the public interest lies. 'The public interest standard necessarily invites reference to First Amendment principles.' *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 US 94, 122 (1973)." *FCC v. National Citizens Comm. For Broadcasting*, 436 US 775, 795 (1978).

in one community, none of those media outlets has an incentive to compete with or contradict the other's news coverage. Nor do those jointly-owned outlets have any incentive to cover stories that may harm the interests of their single corporate parent. As the Commission has recognized in its policy regarding consideration of one-to-a-market waivers, an increase in the number of stations or outlets does nothing to promote the marketplace of ideas if each of those outlets are controlled by the same corporate parent. *See* 47 CFR § 73.3555, Note 7; *see, e.g., Max Media Properties, LLC*, DA 98-1264, Memorandum Opinion and Order, __ FCC Rcd __ at ¶30 (Mass Media Bur. rel. Jun. 29, 1998).

The advent of new media outlets, such as direct broadcast satellite (DBS) service, hardly obviates the need for the Commission's broadcast ownership rules. DBS, cable, and other "new media" distribute programming nationally, and cannot fulfill one of broadcasters' most critical roles: providing coverage of local issues. Broadcast licensees are obligated to meet the needs of the community to which they are licensed, and receive special benefits because of this. The Commission must maintain diversity on a local level because, even if competing outlets proliferate, they will not provide competition for local news, public affairs programming, and locally-oriented entertainment programming.

Within the Commission's analytical framework, *see NOI* at ¶6, UCC/BCFM's traditional area of expertise and interest is in viewpoint and programming diversity. These comments, therefore, will focus on those issues. Clearly, however, competition, in many instances, promotes viewpoint and programming diversity. UCC/BCFM support Commission rules to retain the vibrancy of America's public debate.

I. The Commission Should Not Fragment Consideration of Closely-Related Rule Changes Into Several Different Dockets and Cannot Ignore the Importance of LMAs to this Proceeding.

Broadcast ownership and diversity must be examined in the context of ***all*** Commission broadcast regulation. The *NOI* nevertheless attempts to review closely-related rules in separate dockets. *NOI* at ¶9 (referencing separate proceedings for the television duopoly rule, the one-to-a-market rule, and the daily newspaper/radio cross-ownership rule). This approach tends to interfere with the Commission's ability to engage in rational decision making. At the very least, the Commission should consider these proceedings simultaneously and adopt side-by-side orders addressing all the broadcast ownership rules under consideration in the various dockets.

Perhaps the most egregious example of the Commission's fragmented approach is the Commission's failure to assess the impact of local marketing agreements (LMAs) in its *NOI*. UCC/BCFM have repeatedly complained that LMAs are a device to evade the Commission's ownership rules. It is impossible to assess the state of media concentration without final resolution of whether TV LMAs will be permanently authorized. The Commission's unconscionable inaction has seemingly blessed these highly-questionable arrangements. *See* MAP *et al.* comments at 27-29.

II. The National Television Ownership Rule and the Local Radio Ownership Rules Should Not Be Relaxed.

As the Commission notes in the *NOI*, the national television ownership rule, the local radio ownership rules, and the dual network rule have been recently reexamined and changed in response to Congressional direction to do so. *NOI* at ¶¶11-24. The continued viability of these rules is clear. UCC/BCFM address two separate issues with respect to these rules. First, the Commission does not yet have data that will enable it to satisfy the Congressional directive to evaluate whether

its rules continue to meet the public interest. Second, the Commission did not propose, as it should have, to count satellite stations for the purpose of calculating compliance with national television ownership rules.

A. The Commission Does Not Have Reliable and Meaningful Independent Data to Evaluate the Diversity of the Broadcast Industry.

The Commission requires meaningful and reliable data to evaluate its broadcast ownership rules as required by the Communications Act biennial review provision. 47 USC § 161. The Commission lacks such data. Thus, to produce a report on the radio industry, the Commission has resorted to relying on commercially-available data. *NOI* at ¶¶ 17-20; Mass Media Bureau, *Review of the Radio Industry, 1997,* MM Docket 98-35 (rel. Mar. 13, 1998).[3]

Such private, commercially-produced data is inadequate to evaluate whether broadcasters are meeting their public interest obligations for at least two important reasons. First, they are based on estimates, not actual reported values and thus are subject to methodological variation and outright manipulation. Second, this data is not collected to determine whether stations are operating in the public interest. Commercial data designed to provide advertisers with demographic data will, for example, undercount viewers who are not attractive to advertisers. Commercial data may also incorporate the biases of those who collect it. The Commission cannot rely on data produced on behalf of the industry it is supposed to monitor. The Commission must collect meaningful data that will allow it to satisfy the Congressional directive to evaluate whether its rules continue to meet the public interest. Viewpoint diversity has no impact on corporate stock prices or their bottom lines; the industry will never collect the information needed to evaluate it.

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[3] The Commission has not even prepared such a report on the television industry.

Despite its flaws, even privately-produced commercial data demonstrates that further relaxation of the Commission's radio ownership rules are not warranted. The Commission states that, on average, each local radio station market has lost one owner, and the top ten radio markets have lost an average of three owners since the local radio ownership rules were changed in March 1996. *NOI* at ¶19. Additionally, the total number of national commercial radio station owners has declined by 11.7 percent. *Id.* These figures demonstrate an increased need for the Commission's current rules. Further, they also demonstrate that Congress's goal of allowing broadcasters to improve efficiencies by increasing their economies of scale has been fully satisfied.

B. The Commission Must Count Satellite Stations When Calculating Compliance with the National Television Ownership Rules.

As the Commission has previously proposed, it must count satellite stations for the purpose of calculating compliance with national television ownership rules. *See Second FNPRM* at ¶¶17-24. Almost seven years ago, on August 12, 1991, UCC filed a petition requesting reconsideration and a partial stay of the Commission's decision to permit satellites to be operated without regard to local program content. *Report and Order*, 6 FCC Rcd 4212 (1991), *recon. pending*. The Commission cannot justify the benefit of satellite status in the name of assisting localities lacking adequate service by authorizing broadcast of programming which may be imported -- in its entirety -- from hundreds or thousands of miles away. For a full discussion of this issue see MAP *et al.* comments at 15-17.

III. The Newspaper/Broadcast Cross-Ownership Rule is Essential to Protecting Citizens' First Amendment Rights.

The daily newspaper/broadcast cross-ownership rule is critical to protecting citizens' First Amendment rights. *NOI* at ¶¶28-42. Arguments that increased concentration of ownership will

"improve" news coverage completely miss the criteria according to which the quality of news coverage should be evaluated. *See NOI* at ¶ 38. A single news monopoly stretching across the entire country would surely benefit from immeasurable economies of scale, but it would not produce high-quality news for the communities it serves and would be completely inconsistent with the First Amendment. Quality news coverage for a community is produced by many independent entities competing with one other and providing different perspectives on factual events. Nowhere are the concerns raised in UCC/BCFM's introductory statement, *supra*, more critical than they are with respect to the newspaper/broadcast cross-ownership rule.

Recent controversies about the validity of certain news stories demonstrate that quality news coverage requires many media outlets critiquing and counterbalancing each other's stories. For example, the national press has recently focused on the propriety of the *Cincinnati Enquirer*'s coverage of Chiquita's business practices. Because the story covers a nationally-known corporation, papers such as the *New York Times* and *Wall Street Journal* are carrying stories debating the accuracy of the original *Enquirer* story and are critiquing the *Enquirer*'s news coverage and response to Chiquita's demands. *See, e.g.*, Douglas Frantz, "Chiquita Still Under Cloud After Newspaper's Retreat," *New York Times* at A1 (Jul., 17, 1998); Alix M. Freedman and Rekha Balu, "How Cincinnati Paper Ended Up Backing Off From Chiquita Series," *Wall St. Journal* at A1 (Jul. 17, 1998). If this story covered local issues alone, and did not receive coverage of the national press, residents of Cincinnati would have to rely on local television news for an independent critique of the story. But if the *Enquirer* also owned a local television station, the chances for such a critique would be seriously diminished: a single corporation that owned both the *Enquirer* and a television station would likely not allow one corporate subdivision to undermine

another part of the corporation. Every independent voice that is absorbed into a single economic entity reduces the chances that local media coverage will receive the necessary scrutiny to accurately inform citizens.

IV. The Cable Television/Broadcast Cross-Ownership Rule is Necessary to Protect Diversity.

The cable television/broadcast cross-ownership rule ensures that cable television subscribers have access to diverse viewpoints. Creation of additional channels, such as digital television channels, *see NOI* at ¶46, does not support relaxation of the cross-ownership rule. As UCC/BCFM explain *supra*, creation of additional media outlets does not provide real competition absent independent economic ownership of those outlets. If a cable provider and a broadcast provider are economically linked, the cable provider has every incentive to favor the broadcaster in terms of channel placement and access. Moreover, digital broadcasters will continue to be dependent upon cable providers to reach a majority of the viewing public. Further, these multiple digital channels will all be in the hands of the same incumbent broadcasters that are on the air today. Because these additions do not increase the total number of owners, no diversity is added.

The Commission is correct that the cable/broadcast cross-ownership rule promotes diversity by providing an increased number of outlets for independent programming. *NOI* at ¶52. This increased diversity will be undermined if the Commission allowed a monopoly cable provider to align itself with one television station in a market. *See NOI* at ¶46 (stating that "local markets for the delivery of video programming generally remain highly concentrated").

V. The Commission and the Mass Media Bureau Should Grant Waivers Only In the Most Limited Circumstances.

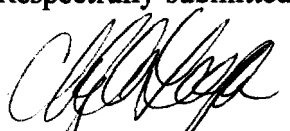
UCC/BCFM applaud the Commission for superseding any precedent indicating that the mere pendency of a proceeding considering the alteration of a broadcast ownership rule justifies a waiver of that rule. *NOI* at ¶58. UCC/BCFM also commend the Commission for taking a more active role in the oversight of delegated authority exercised by the Mass Media Bureau. *See also Joint Press Statement of Commissioner Susan Ness and Commissioner Gloria Tristani Regarding the Mass Media Bureau's Approval of Assignment and Transfer in Redding, CA,* May 29, 1998. As UCC/BCFM and other parties have urged the Commission previously, the continued grant of Bureau-level waivers causes private parties to obtain vested interests in altering the Commission rules and makes it politically more difficult for the Commission to consider the interests of the public, rather than commercial interests, when conducting proceedings such as the instant biennial review. Such actions tend to produce less well-reasoned Commission decisions that are more likely to be arbitrary and capricious.

CONCLUSION

Competition is the only way to ensure that a variety of views reach the American public. This competition stems from the desire of each private, for-profit entity to increase its profits at the expense of its economic competitors. Thus, the relevant level of analysis for evaluating competition is always the corporate entity that owns and/or operates a television station, a radio station, or a cable provider, as opposed to the sheer number of media outlets. The Commission cannot possibly consider two outlets to be a source of diversity when each outlet is owned by the same corporate parent. The Commission's current rules have already been relaxed almost to the

point of meaninglessness in some cases, and cannot be relaxed any further without doing severe harm to the marketplace of ideas.

Respectfully submitted,



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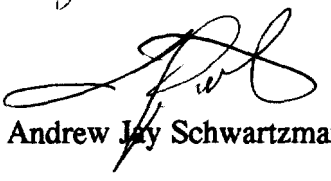

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